Supreme Court, U.S.
FILED
JUL 21 1993
OFFICE OF THE CLERK

NO. 92-2014

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1992

CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND
and
BOARD OF TRUSTEES, CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND
and
EXECUTIVE DIRECTOR, CENTRAL STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND
Cross-Petitioners

vs.

WHITWORTH BROTHERS STORAGE CO.,
Cross-Respondent

ON CROSS PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION TO CROSS-PETITION FOR WRIT OF CERTIORARI

EUGENE I. SELKER
Counsel of Record
HARLAN D. KARP
1111 Ohio Savings Plaza
1801 E. Ninth St.
Cleveland, Ohio 44114
(216) 781-8686
Attorneys for Cross-Respondent

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QUESTION PRESENTED FOR REVIEW

Whether written documents and amendments thereto governing an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. § 1001 et seq., must withstand judicial review under a "reasonableness" standard? Specifically, whether a trust agreement provision limiting the period for which an employer may recover contributions paid to the plan by mistake of law may be determined to be "arbitrary and capricious" and set aside in light of the surrounding circumstances, law, and equities as determined by the court?

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BRIEF IN OPPOSITION TO CROSS-PETITION FOR WRIT OF CERTIORARI

Whitworth Brothers Storage Co. (herein "Whitworth Bros.") respectfully submits its Brief in Opposition to the

Cross-Petition for Writ of Certiorari.[1]

I. STATEMENT OF THE CASE[2]

William and Ernest Whitworth were co-owners, shareholders, officers, and employees of cross-petitioner, Whitworth Brothers Storage Co. ("Whitworth Bros."), a family-operated business begun by their

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[1]Cross-respondent has petitioned for a writ of certiorari in Whitworth Bros. Storage Co. v. Central States, Southeast & Southwest Areas Pension Fund, Supreme Court Case No. 92-1848. Whitworth Bros. received the cross-petition in Case No. 92-2014 on June 21, 1993.

[2]Most of the facts pertinent to this cross-petition are accurately stated in Whitworth Bros. Storage Co. v. Central States Southeast & Southwest Areas Pension Fund, 982 F.2d 1006 (6th Cir. 1993)("Whitworth II"), which has been reprinted in the Appendix to the Petition for Writ of Certiorari in Supreme Court Case No. 92-1848, at pages 2a-65a (herein "Pet.App., No. 92-1848 at page _____"). Because the Court of Appeals accurately recounts the procedural history of this case, it is not addressed at length herein.

father. From 1955-1980 for William, and from 1955 to 1981 for Ernest, Whitworth Bros. made employer contributions to Central States, Southeast and Southwest Areas Pension Fund (herein "Central States"). See Whitworth II, 982 F.2d 1006, 1007; Pet.App., No. 92-1848 at pages 4a-5a. Central States was originally one of the Taft-Hartley Funds and is a multiemployer pension benefit plan under Section 1002(2)(A) of the Employee Retirement Income Security Act of 1974 ("ERISA"). Since Whitworth Bros. began making contributions to Central States, Whitworth Bros. mistakenly believed that it was required to make pension contributions pursuant to the terms of a collective bargaining agreement. Had William and Ernest been employees and not employee-owners they would have been

entitled to a pension from their contributions.

William Whitworth sought to retire in 1979-1980 and requested pension benefits from Central States. Central States ultimately denied his request for a pension on the basis that William Whitworth was an owner and not an employee under ERISA.

William Whitworth retired in March, 1980 and notified Central States of that fact. After that time, Whitworth Bros. made contributions only on behalf of Ernest Whitworth and no other employee. In mid 1980, William Whitworth had not received a pension and was asked whether he had the right to hire and fire while an employee with Whitworth Bros. On November 4, 1980, Whitworth Bros. demanded that Central States either pay William

Whitworth a pension or refund his pension contributions.

After more correspondence, the denial of William Whitworth's pension request, and a second formal demand by Whitworth Bros. for a refund, eight months later, on July 23, 1981, Central States finally acted. Central States denied a refund of contributions on behalf of William Whitworth from 1964 to November, 1979, totalling $7,506; Whitworth Bros.'s account was given a $384.00 credit (from November, 1979 through March, 1980) against future bills that weren't even owed. Whitworth II, 982 F.2d 1006, 1009, 1010 n.6; Pet.App. No. 92-1848 at pages 14a, 17a.

In their July 23, 1981 letter denying refund of the William Whitworth contributions of $7,506.00, Central States

wrote Whitworth Bros.:

> "This denial is based upon the applicable provisions of the Internal Revenue Code and the Employee Retirement Income Security Act of 1974 as amended by the Multiemployer Pension Plan Amendments Act of 1980, Section 310 [sic]. These provisions are very restrictive in terms of those conditions under which refunds are permissible.
>
> We hope you understand that your request was denied because the Central States, Southeast and Southwest Areas Pension Fund must comply with the federal law which governs the operations of Pension Funds."

(Emphasis supplied.)[3]

The evidence derived from this litigation paints a different story. The minutes to the July 14-15, 1980 Trustees' Meeting show that Central States based its refund determination on the following criteria: correspondence (including letters from Whitworth's counsel), most of

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[3]This letter is found in the record at R.56 [Plaintiff's Brief in Opposition to Summary Judgment, appended Exhibit 8].

which was copied to Local Union 392; the Fund's Whitworth Bros. account breakdown (never provided to Whitworth Bros. prior to this lawsuit); a telephone call by Central States Refund Committee to Local Union 392 on June 12, 1980 (again, without Whitworth Bros.' knowledge); the refund committee's June 25, 1980 recommendation, forwarded to Local Union 392 before the Trustees acted (and never to Whitworth Bros. until well into this lawsuit); and on the Central States' amended refund policy (Trust Agreement Article XIV, Section 1, which had been amended, without Whitworth Bros. knowledge, during the pendency of Whitworth Bros. request for a refund. See R.36 [Defendant's Motion for Summary Judgment, Priede Affidavit, Exhibit I].

THE 1980 AMENDMENT TO TRUST AGREEMENT ARTICLE XIV, SECTION 1

On December 16-17, 1980, Central States amended its employer contribution refund policy (Article XIV, Section 1 of the Trust Agreement) to permit employer refunds for "mistakes of law." The Trustees considered only two options (Resolutions A & B), but "both would preserve intact the one-year limit of the Pension Fund and the 30-day limit of the Health and Welfare Fund, respectively." (Emphasis supplied). R.36 [Defendants' Motion for Summary Judgment, Priede Aff., Exh. B].[4]

The existing one-year limitation on employer refunds was maintained, in part on the advice of Central States' counsel,

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[4]Resolution A would have continued the current refund policy ("mistakes of fact only") without any substantive changes.

who opined that neither "retroactive nor prospective modification of prior and current employer contribution refund policies and procedures of the Fund is required by law or by equity." Central States amended its refund policy in light of changes of law brought by the Multi-Employer Pension Plan Amendments Act of 1980 ("MPPAA"), especially to 29 U.S.C. § 1103(c)(2)(A).

In amending and maintaining its refund policy, Central States noted that the current policy resulted in denials of employer refunds for "mistakes of law," and that the Courts had enforced the distinction between mistakes of fact and law. Resolution B accompanying the minutes stated that the Fund needed to protect itself from "significant adverse" and "inequitable effect" of employer

refund requests and "unjustified and detrimental delay by employers in seeking employer contribution refunds." Central States decreed there be "reasonable time limits" upon requests for employer refunds. Central States then declared, without elaboration, that its existing refund policies and procedures, including the one-year refund limitation, were "reasonable in their application" and needed no further changes. R.36 [Defendants' Motion for Summary Judgment, Priede Aff., Exh. B].

In its cross-petition and appendices, Central States fails to identify one key provision of the Trust Agreement:

> "The Trustees, by majority action, shall have the power to construe the provisions of this Agreement and the terms and regulations of the Pension Plan; and any construction adopted by the Trustees <u>in good faith</u> shall be binding upon the Union, Employees

and Employers."
Article IV, § 17[5] (Emphasis supplied)

Section 410 of the MPPAA amended 29 U.S.C. § 1103(c)(2)(A)[6] retroactive to January 1, 1975. The Sixth Circuit noted that the amendments "greatly expanded the scope of section 1103(c)(2)(A) for multiemployer pension plans;" permitted refunds for mistakes of law as well as of fact; and eliminated the one-year limitation on the return of contributions.

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[5]In Central States etc. v. Central Transport Inc., 472 U.S. 559 (1985), this same provision justified Central States' decision to audit employers.

[6]That section currently reads:

> "In the case of a contribution. . . made by an employer to a multiemployer plan by a mistake of fact or law. . .paragraph (1) shall not prohibit the return of such contribution or payment to the employer within 6 months after the plan administrator determines that the contribution was made by such a mistake."

There was also "no express limitation as to the number of mistaken contributions that can be refunded under 29 U.S.C. § 1103(c)(2)(A)(ii)." The statute provided "that the contributions must be returned within six months after the plan administrator determines that the contributions were made by mistake." Whitworth II, at 1011; Pet.App. No. 92-1848 at 22a-23a.

As to the legislative purpose:

> There is no explanation in the legislative history for the elimination of the one-year limitations and the substitution of the six-months provision. This liberalization of the statutory provision for the refund of contributions however, might encourage more employer and employee pension plan participation and thus is certainly not inconsistent with the MPPAA's intent to foster plan contribution and growth. H.R.Rep. No. 869(I), 96th Cong. 2nd Sess. 4, reprinted in 1980 U.S.C.C.A.N. 2918, 2919."

Whitworth II, at 1011 (Emphasis

supplied)(footnote omitted).[7]

After Central States moved for summary judgment, Whitworth Bros. sought discovery on the refund policy rule. After Central States refused to permit any discovery, the district court allowed some limited discovery. R.47, 44. Discovery revealed that as to the Central States' conclusion that "significant adverse" impact if contributions were funded, that the one year refund limit policy was adopted without any actuarial data, studies, or evidence to support these conclusion. R.56 [Plaintiff's Brief in Opp. to Summary Judgment, Answers to

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[7]Congress added "mistake of law" to 29 U.S.C. § 1103(c)(2)(A) because prior law was "too narrow." Whitworth II, 982 F.2d at 1011 n.9 [quoting Joint Explanation of S. 1076: Multiemployer Pension Plan Amendments Act of 1980, 126 Cong.Rec.S. 10130 (July 29, 1980)]."

Amended Interrogatory No. 4].[8]

The District Court permitted discovery on the effect of the refund policy from September 26, 1980 through

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[8]Whitworth Bros. inquired as to Defendant's Summary Judgment Exh. B:

"4). In Defendant's Exhibit "B" the resolution described the "significant" and "adverse" effect on the Plan's funding if mistakenly paid contributions were refunded:

(a) what studies were done to support such conclusion of "significant" or "adverse" impact if contributions were refunded.

Answer: Central States is not aware of any studies that were done.

(b) if studies were done, please supply copies of such studies or the actuarial or statistical date to support the conclusion

Answer: N/A

(c) if no studies were made and no evidence exists to back up such conclusion, what estimate was given to the trustees for their consideration and by whom;

Answer: Unknown

(d) what dollar amount were used to support the conclusion and what actuarial evidence was supplied.

Answer: Unknown."

December 31, 1983.[9] Central States received 383 applications for employer refunds with a total value of $1,613.446.97; 226 applications were granted in whole or in part; 157 were denied totally; and $916,900.60 was credited or refunded to employers for present and future obligations. Thus, Central States was unjustly enriched by almost $700,000 over a three year period under its one year refund policy. R.56 [Plaintiff's Brief in Opp. to Summary Judgment, attached Answers to Amended Interrogatory No.9]. Central States received further windfalls (and its liabilities' were decreased) because it did not have to pay pensions to owner-employees such as William Whitworth.

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[9]The District Court prohibited any inquiry re: the effect of the one year policy prior to September 26, 1980.

Pet.App. No. 92-1848 at page 52a; 982 F.2d at 1017.

In 1980, Central States received employer contributions in the amount of approximately 650 million dollars, and had total income of 860 million. R.56 [Plaintiff's Brief in Opp. to Summary Judgment, Exh. 12].

After the July 23, 1981 denial of a refund, Whitworth Bros. immediately ceased making pension contributions for Ernest Whitworth. Central States kept billing Whitworth Bros., threatened collection through letters and phone calls, and assessed interest and penalties. Meanwhile, the one year refund policy was in effect. Although Whitworth Bros. filed suit in September, 1983 to obtain a refund and to declare the rights of the parties as to the unowed contributions, Central

States kept billing Whitworth Bros. through August, 1984. Whitworth II, 982 F.2d at 1009; Pet.App. No. 92-1848 at page 12a.

Granting summary judgment, the District Court merely proclaimed the one-year policy was reasonable. Pet.App. No. 92-1848 at page 47a, Whitworth II, 982 F.2d at 1016. On appeal, the Sixth Circuit reversed in relevant part. Agreeing with the reasoning of five Circuits, the Sixth Circuit held that a refund policy was arbitrary and capricious and inconsistent with principles of equity unless it was supported by actuarial or financial data and necessary to the financial stability of the fund, or justified by other compelling reasons. As to the unsupported assertions of peril to the Fund's financial stability, the Court

remanded for an evidentiary hearing on the reasonableness of the policy. Pet.App. 92-1848 at 47a-56a; Whitworth II, supra, at 1016-18.

II. ARGUMENT

REASONS FOR DENYING THE CROSS PETITION FOR WRIT OF CERTIORARI

The Sixth Circuit described cross-petitioner's purported conflict among the Circuits as follows:

> "The circuit courts are split in regard to the issue of whether a federal court may determine in an action for restitution under federal common law that a contractual limitation on refunds for contributions mistakenly made is unreasonable. The only circuit that upholds any contractual limitation in regard to refunds as binding under federal common law is the Ninth Circuit"[10]

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[10]Admiral Packing Co. v. Robert F. Kennedy Farm Workers Medical Plan, 874 F.2d 683 (9th Cir. 1989)

* * * *

> The majority of the courts of appeals disagree with the Ninth Circuit and examine the refund provision of a benefit fund's trust agreement to see if it is arbitrary and capricious as weighed by principles of equity."[11]

Whitworth II, 982 F.2d at 1013-14.

There does appear to be a Circuit conflict. However, Admiral Packing did

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[11]Kwatcher v. Mass. Service Emp. Pension Fund, 879 F.2d 957 (1st Cir. 1989); Dumac Forestry Services, Inc. v. Int'l Broth. of Elec. Workers, 814 F.2d 79 (2d Cir. 1987); Plucinski v. I.A.M. National Pension Fund, 875 F.2d 1052 (3d Cir. 1989); Jamail, Inc. v. Carpenters District Council of Houston Pension and Welfare Fund, 954 F.2d 299 (5th Cir. 1992); Whitworth II, supra; Peckham v. Bd. of Trustees of Int'l Bhd. of Painters and Allied Trades Union and Industry Nat'l Pension Fund, 719 F.2d 1063 (10th Cir. 1983). In a pension fund's federal common law action for restitution from a beneficiary, the Sixth Circuit refused to follow the Admiral Packing reasoning and was guided not by the document alone, but by equitable principles. Whitworth II, 982 F.2d at 1017 [discussing Wells v. U.S. Steel & Carnegie Pension Funds, Inc., 950 F.2d 1244, 1250 (6th Cir. 1991)].

not examine any of the other Circuit decisions[12], stands alone without influence on the other Circuits, and relies primarily upon United Mine Workers of America Health & Retirement Funds v. Robinson, 455 U.S. 562 (1982). Robinson is distinguishable because it involved 29 U.S.C. § 186(c)(5) and had nothing to do with ERISA at all.

Nor does this identified conflict in reasoning extend as far as suggested by the cross-petition. In light of this Court's ERISA precedents, the conflict may be illusory.[13] In a nutshell, the cross-

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[12]The Admiral Packing court relief upon Electricians Health, Welfare, & Pension Plans v. Gulino, 594 F.Supp. 1265 (M.D.La. 1984), whose reasoning has been repudiated by Jamail, supra.

[13]Central Transport, supra, 105 S.Ct. at 2839 (trust documents can not excuse trustees from their duties under ERISA and must be construed in light of ERISA policy); Pilot Life. Ins. Co. v. Dedeaux,

petition represents a diatribe against even minimal judicial review of pension fund operations by the federal judiciary. See cross petition at pages 11, 21. According to Central States, federal judges are, without any legal grounds, engaging in judicial activism of the worst magnitude.

This Court should not be fooled by cross-petitioners. Central States' FAILS TO CITE AND ADDRESS THE ONE CASE THAT HAS GREAT BEARING ON THE STANDARD OF JUDICIAL REVIEW IN THE CONTEXT OF FEDERAL COMMON LAW UNDER ERISA:

> Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101 (1989)

Firestone refused to incorporate

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481 U.S. 41 (1987)(courts to fashion federal common law rights and obligations); Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101 (1989)(common law of trusts governs).

principles of the Labor Management Relations Act ("LMRA") wholesale. The common law of trusts, not of contracts (or collective bargaining agreements) applied in ERISA. Although the Firestone holding was limited to judicial review in denial of benefits cases under 29 U.S.C. § 1132, Firestone provides guidance:

> "As they do with contractual provisions, courts construe terms in trust agreements without deferring to either party's interpretation. 'The extent of the duties and powers of a trustee is determined by the rules of law that are applicable to the situation, and not the rules that the trustee or his attorney believes to be applicable, and by the terms of the trust as the court may interpret them, and not as they may be interpreted by the trustee himself or by his attorney.' 3 W. Fratcher, Scott on Trusts § 201, at 221. A trustee who is in doubt as to the interpretation of the instrument can protect himself by obtaining instructions from the court."

109 S.Ct. at 955 (emphasis added).

This Court concluded the discussion of the scope of judicial review pointedly:

> "Of course, if a benefit plan gives discretion to an administrator or fiduciary who is operating under a conflict of interest, that conflict must be weighed as a 'factor[] in determining whether there is an abuse of discretion.' Restatement (Second) of Trusts § 187, Comment d (1959)." Firestone, supra, at 956-957.[14]

Central States argues that its 1980 amendment to the refund policy was reasonable because the Trustees adopted it. Once part of the trust document,

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[14] "In determining the question whether the trustee is guilty of an abuse of discretion in exercising or failing to exercise a power, the following circumstances may be relevant: (1) the extent of the discretion conferred upon the trustee by the terms of the trust; (2) the purposes of the trust; (3) the nature of the power; (4) the existence or nonexistence, the definiteness or indefiniteness, of an external standard by which the reasonableness of the trustee's conduct can be judged; (5) the motives of the trustee in exercising or refraining from exercising the power; (6) the existence or nonexistence of an interest of the trustee conflicting with that of the beneficiaries."
Restatement (Second) of Trusts § 187 Comment d (Emphasis supplied).

federal judges must blindly and uncritically implement it. This position is unwarranted under ERISA and trust law.

Under Article X, Central States had the power to amend the trust agreement. It also had the power to construe terms in the agreement (such as when there is a need to amend the agreement) so long as the construction is done in good faith. Article IV, § 17. But trustees are "fiduciaries" who do not have unbridled power immune from judicial review. Fiduciaries must discharge their duties

> "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims."

Central Transport, Inc., supra, 105 S.Ct. at 2840 [quoting 29 U.S.C. 1104(a)(1)(B)].

The standard of acting with "care, skill, prudence" must mean more than

parroting unsupported conclusions that are convenient and expedient, not based on any data or studies, and represent a conflict of interest. An analogy may be drawn to other areas of law involving fiduciaries.

A corporate Board of Directors has fiduciary duties. Under the business judgment rule, courts generally will not disturb the Director's judgment on corporate decisions. But in order to invoke the protection of the rule, though, the Directors

> "must inform themselves, prior to making a business decision, of all material information reasonably available to them. Having become so informed, they must then act with requisite care in the discharge of their duties."

Gries Sports Enterprises v. Cleveland Browns Football Co., 26 Ohio St.3d 15, 496 N.E.2d 959 (1986)(Emphasis supplied) [applying Delaware corporation law: Aronson v. Lewis, 473 A.2d 805, 812 (Del. 1984)].

Under such standard, corporate boards

can not shirk their responsibilities and must apprise themselves of reasonable available material when considering matters such as mergers or tender offers.

As the First Circuit observed, pension "participants and beneficiaries are not entitled to funds to which they had no right in the first place." Kwatcher, supra, 879 F.2d at 967 [quoting Note, Implying a Statutory Right for Employers for Return of Mistaken Overcontributions to a Multiemployer-Employee Benefit Plan, 62 Notre Dame L.Rev. 396, 409 (1987)]. Trustees have no license to obtain contributions they are not entitled to in the first place. Fiduciaries must act with "the requisite skill and care" to determine what are trust assets (and by implication, what are not.) Central Transport, supra.

Central States did not adopt a refund rule consistent with the September 26, 1980 amendments in 29 U.S.C. § 1103(c)(2), which "greatly liberalized" previous law. Rather, they maintained, to the greatest extent possible, the draconian version Congress repealed.[15] When the Trustees considered the rules changes during the pendency of Whitworth Bros. request, they did not inform Whitworth Bros.. Nor did they seek any studies, actuarial evidence, or a report of the operation of the old policy. Instead, their minutes are filled

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[15]It must be noted that the Trustees knew of the plight of small owner-employees when it maintained its policy in 1980. Just ask Mr. Crews, see Crews v. Central States S.E. & S.W. Areas Pension Fund, 788 F.2d 332 (1986)(for factual background), who contributed from 1950-1978. Mr. Fuller, Fuller Cinder Co. v. Central States Pension Fund, unreported, 2 Employee Benefits Cases 2458 (E.D.Mich. 1982), also suffered the same as Whitworth Bros. If permitted, discovery would reveal countless others.

with unsupported conclusions. And in informing Whitworth Bros. about the denial of the refund, they stated that the law was "very restrictive." In short, they lied. Meanwhile, they were unjustly enriched by nearly $200,000 a year from 1980-1983.

Arbitrary and capricious denotes some minimal degree of rationality and integrity in the decision making process. The judiciary has acted properly in reviewing the decision making process of Trustees and in furthering the equitable goals of ERISA, such as fostering the growth of voluntary ERISA plans. Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41 (1987) encouraged the federal courts to create federal common law rights and obligations; Firestone told the Courts to borrow from the law of trusts. If

unchecked, bad pension funds will promulgate policies that derogate federal common law.

As Jamail observed:

> "Moreover, not every pension fund will be administered in a reasonable manner. An unscrupulous trustee could extort money out of an employer by fraud and then refuse to refund the money."

Jamail, supra, 954 F.2d at 304 (citing Plucinski, supra, 875 F.2d at 1058.

THERE HAS BEEN NO PROOF OF HARM TO THE FINANCIAL STABILITY OF THE PLAN

Although Central States raises the specter of harm to its financial stability, it failed to provide any evidence of that before the District Court. The Court of Appeals noted this failure.[16] Pet.App. No. 92-1848 at 48a.

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[16]In fact, Central States improperly attempted to provide this evidence for the first time on appeal, and caused the Sixth Circuit to utilize such improper evidence. That improper use is Question 4 to the

The only evidence of Central States' financial condition in the record before the district court was that in 1980, Central States had 3 billion dollars in net assets. In the year 1980, Central States received over 650 million dollars in employer contributions and had 850 million dollars of income. R.56 [Brief in Opp. to Summary Judgment, Exh. 12]. Between September, 1980 to December 31, 1983, employer's requested 1.6 million dollars in refunds (amounting roughly to an average of $500,000 per year.) Whitworth Bros. requested a refund of $20,000. Moreover, the pension fund received a windfall by not paying a pension.

The real threat to the financial stability of Central States has been the

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Petition in Case No. 92-1848.

behavior of its past trustees,[17] its present ones, and its generous administrative expenses (lawyers, lawyers, and more outside lawyers, fighting the legitimate refund claims of small employers such as Whitworth Bros). All of which have depleted the resources and goodwill (as if there were any) of the Central States Pension Fund. Small employers have been discouraged from participating in pension plans such as Central States.

The conflict between the Ninth Circuit and the rest of the judiciary appears to be localized. The majority of Circuits are correct in allowing principles of equity, fairness, and rationality to enter the picture.

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[17] Secretary of Labor v. Fitzsimmons, 805 F.2d 682, 684-87 & n.7 (7th Cir. 1986) (en banc) (describing corruption).

III. CONCLUSION

Accordingly, for the foregoing reasons, this Court should deny the Cross-Petition for Writ of Certiorari.

Respectfully Submitted,

EUGENE I. SELKER
Counsel of Record
HARLAN D. KARP
SELKER & FURBER
1111 Ohio Savings Plaza
1801 E. Ninth St.
Cleveland, Ohio 44114
(216) 781-8686

Attorneys for Cross-Respondent Whitworth Bros. Storage Co.